3

No. 06-322

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SUPREME COURT

In The

Supreme Court of the United States

RONALD W. MORTERS,

Petitioner,

v.

AIKEN & SCOPTUR, S.C., TIMOTHY J. AIKEN, PAUL J. SCOPTUR AND KELLY I. CENTOFANTI,

Respondents.

On Petition For Writ Of Certiorari To The Wisconsin Court Of Appeals, District I

SECOND SUPPLEMENTAL BRIEF UNDER RULE 15.8

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SECOND SUPPLEMENTAL ARGUMENT

I. THE COURT OF APPEALS' TREATMENT OF RONALD W. MORTERS' REQUEST FOR SUPERVISORY RELIEF FURTHER ILLUSTRATES THE VIOLATION OF HIS FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS OF LAW AND EQUAL PROTECTION OF LAW BY THE WISCONSIN COURTS.

A. Introduction

Pursuant to Rule 15.8, the petitioner, Ronald W. Morters, submits this Second Supplemental Brief to advise the United States Supreme Court of additional recent events which are relevant to its consideration of his pending Petition for Writ of Certiorari. While the filing of a Second Supplemental Brief is unusual, Mr. Morters believes that it is extremely important for the Court to be aware of how the Wisconsin Court of Appeals arbitrarily disposed of his petition for supervisory relief to compel compliance with the appellate mandate. (See Supplemental Brief, p. 4-5.) Such treatment further illustrates the violation of his rights to due process and equal protection of law which Mr. Morters has faced throughout this litigation.

B. Additional Relevant Facts

In his initial Supplemental Brief filed on September 25, 2006, Mr. Morters discussed a series of events involving the Circuit Court's delay in returning his deposit for appellate costs and fees in accordance with the decision and mandate of the Court of Appeals. (See Supplemental Brief, p. 1-5.) Because he was extremely concerned that the trial court would continue to withhold the appellate fee deposit, Mr. Morters filed a petition for supervisory relief

with the Court of Appeals on September 15, 2006 seeking a writ to compel the trial court to return the appellate deposit. (See Supplemental Brief, p. 4-5.) As noted on page 5 of his Supplemental Brief, Mr. Morters subsequently received by mail a copy of an order releasing the funds dated September 13, 2006 together with a check in the amount of $18,924.35 returning the appellate deposit. (S. App. I1-2)[1] The disbursement order, however, failed to acknowledge that the trial court had been reversed and that such release was pursuant to the mandate of the Court of Appeals. (S. App. I1 - 2)

After receiving the appellate deposit, Mr. Morters notified the Court of Appeals by a letter dated September 18, 2006 that the deposit had been returned. (S. S. App. A1-2)[2] Mr. Morters pointed out to the Court that the language of the disbursement order failed to mention that such release was pursuant to the decision of the Court of Appeals. (S. S. App. A1-2) Since he wanted to present the events relating to the delay of the return of the appellate deposit to the United States Supreme Court as soon as possible and was uncertain as to when the Court of Appeals would act on his request for supervisory relief, Mr. Morters filed his Supplemental Brief on September 25, 2006.

On September 26, 2006, the Court of Appeals issued a brief opinion and order denying the petition for supervisory writ. (S. S. App. B1-2) Based upon Mr. Morters' September 18, 2006 letter, the Court concluded that the writ

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[1] These appendix references refer to the Supplemental Appendix in Mr. Morters' initial Supplemental Brief.

[2] These appendix references refer to the Second Supplemental Appendix which accompanies this Brief and are designated "S. S. App.".

is now moot. (S. S. App. B1-2) The opinion, however, contained no supervisory language discussing the trial court's legal duty to promptly comply with the appellate mandate. (S. S. App. B1-2)

C. Discussion

Under Wisconsin law, an issue is moot when its resolution will have no practical effect on a controversy, See *State ex rel. Olson v. Litscher,* 2000 WI App. 61, par. 3, 233 Wis. 2d 685, 608 N.W. 2d 425 (Ct. App. 2000) citing *Warren v. Link Farms, Inc.*, 123 Wis. 2d 485, 487, 368 N.W. 2d 688 (Ct. App. 1985). The Court in *Olson* described a moot question as being one which circumstances have rendered purely academic. *Olson,* 2000 WI App. 61 at par. 3. Because the appellate deposit was tardily but ultimately returned, the issue presented in Mr. Morters' petition for supervisory relief was technically moot. As a general rule, moot issues will not be considered on appeal. *Reserve Life Ins. Co. v. La Follette,* 108 Wis. 2d 637, 643, 323 N.W. 2d 173 (Ct. App. 1982).

There are, however, well-established exceptions under Wisconsin law where moot issues will be considered by the appellate courts. Moot issues will be considered if "*the issue has great public importance, a statute's constitutionality is involved, or a decision is needed to guide the trial courts.*" *Litscher,* 2000 WI App. 61 at par. 3 citing *Warren,* 123 Wis. 2d at 487. [Emphasis added] See also *Ziemann v. Village of North Hudson,* 102 Wis. 2d 705, 712, 307 N.W. 2d 236 (1981). Two of these exceptions clearly mandated consideration of the trial court's inaction in returning the appellate deposit raised in Mr. Morters' petition for supervisory relief.

As discussed on pages 5 and 6 of his Supplemental Brief, Wisconsin Statutes, Secs. 808.08(1) and 808.09, impose a plain and positive duty on the trial courts to promptly comply with the decisions and mandates of the appellate courts. *Fullerton Lumber Co. v. Torborg,* 274 Wis. 478, 483, 80 N.W. 2d 461 (1957) and *State ex rel. Reynolds v. Breidenbach,* 205 Wis. 483, 485, 237 N.W. 81 (1931) cited on page 6 of the Supplemental Brief emphasize that it is the duty of trial courts to comply with the appellate mandate. In this case, the February 14, 2006 decision[3] of the Court of Appeals, the June 19, 2006 appellate mandate,[4] and the foregoing statutes imposed a plain and positive duty to promptly return the appellate fee deposit to Mr. Morters.

By virtue of the Wisconsin Constitution, the people of the State of Wisconsin created a court system whereby appellate jurisdiction was vested in the Court of Appeals pursuant to Article VII, Sec. 5(3) while the Circuit Courts were given original jurisdiction in all matters civil and criminal except as otherwise provided by law in accordance with Article VII, Sec. 8. The Circuit Court's jurisdiction is subject to the appellate and supervisory powers reserved by the Constitution to the appellate courts. See *In Matter of Guardianship of Eberhardy,* 102 Wis. 2d 539, 550, 307 N.W. 2d 881 (1981) and *Kotecki v. Radtke, S.C. v. Johnson,* 192 Wis. 2d 429, 442, footnote 9, 531 N.W. 2d 606 (Ct. App. 1995). The maintenance of respect for the appellate court system and ultimately respect for due process and the will of the people is of paramount importance.

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[3] (App. A1-8) This reference refers to the Appendix to Mr. Morters' Petition for Writ of Certiorari.

[4] (S. App. B1-2)

In light of such considerations, it is therefore of great public importance for the appellate courts to emphasize the duty of the trial court to comply with the appellate mandate and to warn against such violations in all situations even in those such as this where the noncompliance has become moot. The importance of the principles involved outweighs the mootness of the issue and requires appellate consideration. In this case, strong language emphasizing the trial court's legal duty to promptly comply with the appellate mandate should have been included in the Court of Appeals' opinion. Furthermore, the Court's order should have recited that the petition was being "dismissed" rather than "denied." According to *Olson,* moot cases are "dismissed." *Olson,* 2000 WI App. 61 at par. 2 & 3. The term "denial," on the other hand, implies that the merits do not favor the requested relief. Had the appellate deposit not been returned, the merits of Mr. Morters' petition strongly favored the granting of relief.

In addition to the public importance of considering the appellate deposit return issue, the matter should have been considered in order to provide guidance to the trial courts as to the need for prompt compliance with the appellate mandate. *Article VII, Sec. 5(3), also gives the Court of Appeals "... supervisory authority over all actions and proceedings in the courts in the district."* As part of its supervisory role, the Court of Appeals should have reminded the Circuit Courts of the need to promptly comply with its duties set forth in Secs. 808.08(1) and 808.09. Some discussion as to what constitutes reasonable promptness in performing a ministerial duty would have been extremely beneficial to the lower courts. Undoubtedly, deposit return issues will arise in the future. By providing guidance to the trial courts in its opinion in this matter,

the Court of Appeals could have prevented future litigants from having to expend time and money to seek supervisory relief.

As the foregoing discussion has shown, there were compelling reasons for the Court of Appeals to have considered the deposit return issue even though the appellate deposit was tardily returned. Instead of being greatly concerned with the Circuit Court's failure to follow established remittitur procedure and the appellate mandate, the Court of Appeals appeared indifferent to such violation of Mr. Morters' Fourteenth Amendment rights to due process and equal protection of law. Unfortunately, this attitude is entirely consistent with the pattern of Constitutional violations and discriminatory treatment which Mr. Morters has faced as discussed in his Petition for Certiorari.

When considering Fourteenth Amendment cases, it is enlightening to look back at this Nation's history to remind ourselves why these Constitutional protections are important. In his *Thoughts on Government: Applicable to the Present State of the American Colonies. In a Letter from a Gentleman to his Friend,* Letter from John Adams to George Wythe, March of 1776, printed anonymously in Philadelphia by John Dunlap in April, 1776 and reprinted in Boston by John Gill, excerpts contained in R. Bernstein & K. Rice, *Are We To Be A Nation, The Making Of The Constitution* (Bicentennial Ed. 1987), p. 50-51, John Adams expressed his disapproval of a one house legislature noting that "[a] single Assembly is liable to all the vices, follies and frailties of an individual. Subject to fits of humour, starts of passion, flights of enthusiasm, partialities of prejudice, and consequently productive of hasty results and absurd judgments." When the Constitution

was being debated, there was concern that the proposed judicial provisions would create an oppressive aristocracy which would enable the rich to ruin the poor. See *Are We To Be A Nation,* p. 228.

Without the Fourteenth Amendment rights to due process of law and equal protection of law and the myriad of federal and state laws enacted in conjunction therewith, the judicial system would be plagued by the same problems about which Adams warned. Due process and equal protection of law are the guideposts which keep the judicial system fundamentally fair and prevent it from becoming arbitrary. These constitutional protections must be jealously guarded by all of the State and Federal courts. Therefore, it is important for the courts to criticize and correct violations of these rights even in situations such as this where subsequent action rendered the deprivation moot. The Supremacy Clause set forth in Article VI of the United States Constitution, in fact, demands that such rights be guarded. The protection and enforcement of these Fourteenth Amendment rights is essential to the survival of the Constitution and this Nation.

CONCLUSION

The events following remittitur and the Court of Appeals' response thereto presented in Mr. Morters' Supplemental Briefs further demonstrate the need for the United States Supreme Court to protect Fourteenth Amendment rights to due process of law and equal protection of law by granting certiorari in this case. Since the Wisconsin courts have failed to protect these rights, the United States Supreme Court must necessarily act.

By declining to rectify the Court of Appeals inexplicable failure to remand Aiken & Scoptur's appellate request for frivolity consideration, the Wisconsin Supreme Court has approved a deprivation of Mr. Morters' Fourteenth Amendment rights to due process of law and equal protection under the law. Such deprivation cannot be allowed to stand. For the reasons recited in his Petition for Writ of Certiorari and in his Supplemental Briefs, Ronald W. Morters' Petition for Writ of Certiorari should be granted and it is respectfully requested that the Court grant the same.

Dated at Big Bend, Wisconsin, this 4th day of October, 2006.

Respectfully submitted,

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SECOND SUPPLEMENTAL APPENDIX A

Ronald W. Morters
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BY FAX & MAIL

September 18, 2006

Clerk of Wisconsin Court of Appeals
110 E. Main Street, Suite 215
P.O. Box 1688
Madison, Wisconsin 53701-1688

Re: Ronald W. Morters, Petitioner -vs- Aiken & Scoptur, S.C., et al, Respondents
Trial Court Case No. 01-CV-004476
Appeal No. 2006AP2244-W

Dear Madam:

On Friday September 15, 2006, I filed, by hand delivery, a Petition for Supervisory Writ with the Court of Appeals seeking a supervisory writ compelling the Milwaukee County Circuit Court, Judge Richard J. Sankovitz, to return to me the portion of my appellate deposit made with the Milwaukee County Clerk of Courts which was related to appellate costs and fees. In its February 14, 2006 decision and June 19, 2006 mandate, this portion of the judgment against me was reversed.

Subsequently, I received in the mail an order issued by Judge Sankovitz releasing the deposit together with a check for such sum. Accordingly, I am writing to advise the Court of Appeals that such sum has now been returned. An original and four copies of this letter are being forwarded to your office by fax and mail. I do note that the language of the disbursement order fails to mention that such release was pursuant to the decision of the Court of Appeals. I am serving by mail only a copy of this letter on

the other parties to the Petition. Thank you for your attention and courtesy.

Yours truly,

/s/ Ronald W. Morters
Ronald W. Morters

Copy: Attorney Paul R. Erickson
Hon. Richard J. Sankovitz
Attorney Peggy A. Lautenschlager, Attorney General

SECOND SUPPLEMENTAL APPENDIX B

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DISTRICT I

September 26, 2006

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You are hereby notified that the Court has entered the following opinion and order:

2006AP2244-W State of Wisconsin ex rel. Ronald W. Morters v. Circuit Court for Milwaukee County, The Honorable Richard J. Sankovitz, presiding, Aiken & Scoptur, S.C., Paul J. Scoptur and Kelly I. Centofanti (L.C. #2001CV4476)

Before Fine, Curley and Kessler, JJ.

Ronald W. Morters, *pro se*, filed a petition for supervisory writ against the circuit court for Milwaukee County. By his petition, Morters sought an order compelling the Milwaukee County Circuit Court to return to him "all sums currently being held on deposit by the Milwaukee County Clerk of the Courts as security for appellate costs and fees." Subsequent to the filing of his petition, Morters provided a letter to the court indicating that he has now received "an order issued by [the circuit court] releasing the deposit together with a check for such sum." As it appears that the writ is now moot,

IT IS ORDERED that the petition for supervisory writ is denied.

Cornelia G. Clark
Clerk of Court of Appeals